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6  
7                   UNITED STATES DISTRICT COURT  
8  
9                   DISTRICT OF ARIZONA

9                  **Linda Gonzalez,**  
10                  Plaintiff,  
11                  v.  
12                  **Smiles Divine Dental TMD Craniofacial**  
13                  **Pain Center, LLC, an Arizona Limited**  
14                  **Liability Company; and Luz Tobias and**  
15                  **John Doe Tobias, a Married Couple,**  
16                  Defendant.

17                  No. \_\_\_\_\_

18                  **VERIFIED COMPLAINT**

19                  Plaintiff, Linda Gonzalez (“Plaintiff”), sues the Defendants, Smiles Divine Dental  
20                  TMD Craniofacial Pain Center, LLC, (“Smiles Divine”) and Luz Tobias and John Doe  
21                  Tobias (collectively, “Defendants”) and alleges as follows:

22                  **PRELIMINARY STATEMENT**

23                  1.        This is an action for unpaid wages, liquidated damages, attorneys’ fees,  
24                  costs, and interest under the Fair Labor Standards Act (“FLSA”), 29 U.S.C. § 201, et  
25                  seq.; the Arizona Minimum Wage Act (“AMWA”), Arizona Revised Statutes (“A.R.S.”);  
26                  and the Arizona Wage Act (“AWA”), A.R.S. Title 23, Chapter 8.

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1       2. The FLSA was enacted “to protect all covered workers from substandard  
2 wages and oppressive working hours.” Barrentine v. Ark Best Freight Sys. Inc., 450 U.S.  
3 728, 739 (1981). Under the FLSA, employers must pay all non-exempt employees a  
4 minimum wage of pay for all time spent working during their regular 40-hour  
5 workweeks. See 29 U.S.C. § 206(a). Under the FLSA, employers must pay all non-  
6 exempt employees one and one-half their regular rate of pay for all hours worked in  
7 excess of 40 hours in a workweek. See 29 U.S.C. § 207.  
8

12        4.      The AWA, A.R.S § 23-350, et seq., establishes the law regarding the  
13 payment of wages within the State of Arizona.

## **JURISDICTION AND VENUE**

16        5.     This Court has subject matter jurisdiction pursuant to 28 U.S.C. § 1331 and  
17     29 U.S.C. § 201, *et seq.* because this civil action arises under the Constitution and law of  
18     the United States. This Court also has subject matter jurisdiction pursuant 28 U.S.C. §  
19     1367 because the state law claims asserted herein are so related to claims in this action  
20     over which this Court has subject matter jurisdiction that they form part of the same case  
21     or controversy under Article III of the United States Constitution.  
22

23       6.      Venue is proper in this district pursuant to 28 U.S.C. § 1391(b)(ii) because  
24      acts giving rise to the claims of Plaintiff occurred within the District of Arizona, and  
25      Defendants regularly conduct business in and have engaged in the wrongful conduct  
26      alleged herein – and, thus, are subject to personal jurisdiction in – this judicial district.  
27

## PARTIES

7. At all material times, Plaintiff is an individual residing in Maricopa County, Arizona, and is a former employee of Defendants.

8. At all material times, Defendant Smiles Divine Dental TMD Craniofacial Pain Center, LLC was a limited liability company duly licensed to transact business in the State of Arizona. At all material times, Defendant Smiles Divine Dental TMD Craniofacial Pain Center, LLC does business, has offices, and/or maintains agents for the transaction of its customary business in Maricopa County, Arizona.

9. Defendant Smiles Divine Dental TMD Craniofacial Pain Center, LLC is an Arizona limited liability, authorized to do business in the State of Arizona and is at all relevant times Plaintiff's employer as defined by 29 U.S.C. § 203(d).

10. Under the FLSA, Defendant Smiles Divine Dental TMD Craniofacial Pain Center, LLC is an employer. The FLSA defines “employer” as any person who acts directly or indirectly in the interest of an employer in relation to an employee. At all relevant times, Defendant Smiles Divine Dental TMD Craniofacial Pain Center, LLC had the authority to hire and fire employees, supervised and controlled work schedules or the conditions of employment, determined the rate and method of payment, and maintained employment records in connection with Plaintiff’s employment with Defendants. As a person who acted in the interest of Defendants in relation to the company’s employees, Defendant Smiles Divine Dental TMD Craniofacial Pain Center, LLC is subject to liability under the FLSA.

1           11. Defendants Luz Tobias and John Doe Tobias are, upon information and  
2 belief, husband and wife. They have caused events to take place giving rise to the claims  
3 in this Complaint as to which their marital community is fully liable. Luz Tobias and  
4 John Doe Tobias are owners of Smiles Divine and were at all relevant times Plaintiff's  
5 employer as defined by the FLSA, 29 U.S.C. § 203(d).  
6

7           12. Under the FLSA, Defendants Luz Tobias and John Doe Tobias are  
8 employers. The FLSA defines "employer" as any individual who acts directly or  
9 indirectly in the interest of an employer in relation to an employee. Luz Tobias and John  
10 Doe Tobias are owners of Smiles Divine. At all relevant times, they had the authority to  
11 hire and fire employees, supervised and controlled work schedules or the conditions of  
12 employment, determined the rate and method of payment, and maintained employment  
13 records in connection with Plaintiff's employment with Defendants. As persons who  
14 acted in the interest of Defendants in relation to the company's employees, Luz Tobias  
15 and John Doe Tobias are subject to individual liability under the FLSA.  
16

17           13. Plaintiff is further informed, believes, and therefore alleges that each of the  
18 Defendants herein gave consent to, ratified, and authorized the acts of all other  
19 Defendants, as alleged herein.  
20

21           14. Defendants, and each of them, are sued in both their individual and  
22 corporate capacities.  
23

24           15. Defendants are jointly and severally liable for the injuries and damages  
25 sustained by Plaintiff.  
26

27

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1           16. At all relevant times, Plaintiff was an “employee” of Defendants as defined  
2 by the FLSA, 29 U.S.C. § 201, *et seq.*

3           17. The provisions set forth in the FLSA, 29 U.S.C. § 201, *et seq.*, apply to  
4 Defendants.

5           18. At all relevant times, Defendants were and continue to be “employers” as  
6 defined by the FLSA, 29 U.S.C. § 201, *et seq.*

7           19. The provisions set forth in the A.R.S. Title 23, Articles 7 and 8 apply to  
8 Defendants.

9           10 20. At all relevant times, Plaintiff was an “employee” of Defendants as defined  
11 by the Arizona A.R.S. § 23-350, *et seq.*

12           13 21. At all relevant times, Defendants were and continue to be “employers” as  
14 defined by A.R.S. § 23-350.

15           16 22. At all relevant times, Plaintiff was an “employee” of Defendants as defined  
17 by A.R.S. § 23-362.

18           19 23. At all relevant times, Defendants were and continue to be “employers” as  
20 defined by A.R.S. § 23-362.

21           22 24. Defendants individually and/or through an enterprise or agent, directed and  
22 exercised control over Plaintiff’s work and wages at all relevant times.

23           24 25. Plaintiff, in her work for Defendants, was employed by an enterprise  
25 engaged in commerce that had annual gross sales of at least \$500,000.

26           27 26. At all relevant times, Plaintiff, in her work for Defendants, was engaged in  
27 commerce or the production of goods for commerce.

1           27. At all relevant times, Plaintiff, in her work for Defendants, was engaged in  
2 interstate commerce.

3       28. Plaintiff, in her work for Defendants, regularly handled goods produced or  
4 transported in interstate commerce.

## **NATURE OF THE CLAIM**

7           29. Defendants own and/or operate as Defendant Smiles Divine, an enterprise  
8 located in Maricopa County, Arizona.

9       30. Defendants do business as "Smiles Divine," a dental office located at 6003  
10      W. Thunderbird Road, Suite #2, Glendale, AZ 85306.  
11

12       31. Plaintiff was hired by as a front office worker and biller on or around April  
13 16, 2021 and worked for Defendants until approximately February 28, 2022.

32. Plaintiff was hired to work for Defendants by Defendant Luz Tobias.

13                   33. Defendants, in their sole discretion, agreed to pay Plaintiff \$19 per hour for  
14                   all hours she worked.  
15  
16  
17

18       34. During the time that Plaintiff worked for Defendants, Plaintiff worked  
19 approximately 40 hours per week.

20           35. Defendants did not pay Plaintiff her paycheck for her final two weeks of  
21 work for Defendants.  
22

23       36. As a result, Defendants did not pay Plaintiff for approximately 80 hours of  
24 work over the course of two workweeks.

25           37. As a result, Defendants failed to compensate Plaintiff any wage whatsoever  
26           for Plaintiff's final two weeks of work.  
27

1           38. On or about February 26, 2022, Defendant Luz Tobias informed Plaintiff  
2 via text message that, despite having worked a full two weeks' worth of time, she would  
3 not be paying Plaintiff her final paycheck and instead would be using Plaintiff's wages as  
4 part of the deposit for her new office.  
5

6           39. On or about February 26, 2022, Defendant Luz Tobias sent a text message  
7 to Plaintiff stating "I need to put \$5,000 first and last deposit to the new landlord. I won't  
8 be able to pay you \$1,200 at the end of the month."

9           40. Plaintiff's next payday was supposed to be on approximately March 1,  
10  
11 2022.

12           41. To date, Defendants have still paid no wages whatsoever to Plaintiff for  
13 such hours worked.

14           42. As a result of Defendants' having improperly failed to compensate Plaintiff  
15 any wage whatsoever for Plaintiff's final two weeks of work, Defendants failed to pay  
16 the applicable minimum wage to Plaintiff.  
17

18           43. As a result of not having paid any wage whatsoever to Plaintiff during her  
19 final two workweeks with Defendants, Defendants failed to pay the applicable minimum  
20 wage to Plaintiff.  
21

22           44. As a result of Defendants' willful failure to compensate Plaintiff any wage  
23 whatsoever for such hours worked, Defendants violated 29 U.S.C. § 206(a).

24           45. As a result of Defendants' willful failure to compensate Plaintiff any wage  
25 whatsoever for such hours worked, Defendants violated the AMWA, A.R.S. § 23-363.  
26  
27

1           46.     As a result of Defendants' willful failure to compensate Plaintiff any wage  
2     whatsoever for such hours worked, Defendants violated the AWA, A.R.S., § 23-351.

3           47.     Plaintiff was a non-exempt employee.

4           48.     Plaintiff is a covered employee within the meaning of the FLSA.

5           49.     Plaintiff is a covered employee within the meaning of the AMWA.

6           50.     Plaintiff is a covered employee within the meaning of the AWA.

7           51.     Defendants refused and/or failed to properly disclose to or apprise Plaintiff  
8     of her rights under the FLSA.

9  
10           52.     Defendants individually and/or through an enterprise or agent, directed and  
11     exercised control over Plaintiff's work and wages at all relevant times.

12  
13           53.     Due to Defendants' illegal wage practices, Plaintiff is entitled to recover  
14     from Defendants compensation for unpaid minimum wages, an additional amount equal  
15     amount as liquidated damages, interest, and reasonable attorney's fees and costs of this  
16     action under 29 U.S.C. § 216(b).

17  
18           54.     Due to Defendants' illegal wage practices, Plaintiff is entitled to recover  
19     from Defendants compensation for unpaid wages, an additional amount equal to twice the  
20     unpaid minimum wages as liquidated damages, interest, and reasonable attorney's fees  
21     and costs of this action under A.R.S § 23-363.

22  
23           55.     Due to Defendants' illegal wage practices, Plaintiff is entitled to recover  
24     from Defendants compensation for his unpaid wages at an hourly rate, to be proven at  
25     trial, in an amount that is treble the amount of his unpaid wages, plus interest thereon,  
26     and his costs incurred under A.R.S. § 23-355.

**COUNT ONE: FAIR LABOR STANDARDS ACT**  
**FAILURE TO PAY MINIMUM WAGE**

3 56. Plaintiff realleges and incorporates by reference all allegations in all  
4 preceding paragraphs.

5       57.    As a result of not paying Plaintiff any wage whatsoever for the final pay  
6    period of her employment, Defendant willfully failed or refused to pay Plaintiff the  
7    FLSA-mandated minimum wage.

9       58.    Defendant's practice of failing or refusing to pay Plaintiff at the required  
10 minimum wage rate violated the FLSA, 29 U.S.C. § 206(a).

11       59. Plaintiff is therefore entitled to compensation for the full applicable  
12 minimum wage at an hourly rate, to be proven at trial, plus an additional equal amount as  
13 liquidated damages, together with interest, reasonable attorney's fees, and costs.  
14

15       **WHEREFORE**, Plaintiff, Linda Gonzalez, respectfully requests that this Court  
16 grant the following relief in Plaintiff's favor, and against Defendants:

18 A. For the Court to declare and find that the Defendant violated minimum  
19 wage provisions of the FLSA, 29 U.S.C. § 206(a), by failing to pay proper  
20 minimum wages;

21 B. For the Court to award Plaintiff's unpaid minimum wage damages, to be  
22 determined at trial;

23 C. For the Court to award compensatory damages, including liquidated  
24 damages pursuant to 29 U.S.C. § 216(b), to be determined at trial;

25 D. For the Court to award prejudgment and post-judgment interest;

26

27

1 E. For the Court to award Plaintiff reasonable attorneys' fees and costs of the  
2 action pursuant to 29 U.S.C. § 216(b) and all other causes of action set  
3 forth herein;  
4 F. Such other relief as this Court shall deem just and proper.

## **COUNT TWO: ARIZONA MINIMUM WAGE ACT FAILURE TO PAY MINIMUM WAGE**

8       60. Plaintiff realleges and incorporates by reference all allegations in all  
9 preceding paragraphs.

10       61.     As a result of not paying Plaintiff any wage whatsoever for the final pay  
11      period of her employment, Defendant failed or refused to pay Plaintiff the Arizona  
12      minimum wage.

14 62. Defendant's practice of failing or refusing to pay Plaintiff at the required  
15 minimum wage rate violated the AMWA, 23-363.

16       63. Plaintiff is therefore entitled to compensation for the full applicable  
17       minimum wage at an hourly rate, to be proven at trial, plus an additional amount equal to  
18       twice the underpaid wages as liquidated damages, together with interest, reasonable  
19       attorney's fees, and costs.  
20

21       **WHEREFORE**, Plaintiff, Linda Gonzalez, respectfully requests that this Court  
22 grant the following relief in Plaintiff's favor, and against Defendants:

24           A. For the Court to declare and find that the Defendants violated minimum  
25           wage provisions of the AMWA, A.R.S. § 23-363 by failing to pay proper  
26           minimum wages;

1           B. For the Court to award Plaintiff's unpaid minimum wage damages, to be  
2           determined at trial;

3           C. For the Court to award compensatory damages, including liquidated  
4           damages pursuant to A.R.S. § 23-364, to be determined at trial;

5           D. For the Court to award prejudgment and post-judgment interest;

6           E. For the Court to award Plaintiff reasonable attorneys' fees and costs of the  
7           action pursuant to A.R.S. § 23-364 and all other causes of action set forth  
8           herein;

9           F. Such other relief as this Court shall deem just and proper.

10

11

12           **COUNT THREE: ARIZONA WAGE ACT**  
13           **FAILURE TO PAY WAGES OWED**

14           64. Plaintiff realleges and incorporates by reference all allegations in all  
15 preceding paragraphs.

16           65. As a result of the allegations contained herein, Defendants did not  
17 compensate Plaintiff wages due and owing to her.

18           66. Defendants engaged in such conduct in direct violation of A.R.S. § 23-350.

19           67. As such, unpaid wages for such time Plaintiff worked are owed to Plaintiff  
20 for the entire time she was employed by Defendants.

21

22           68. Plaintiff is therefore entitled to compensation for her unpaid wages at an  
23 hourly rate, to be proven at trial, in an amount that is treble the amount of his unpaid  
24 wages, plus interest thereon, and his costs incurred.

25

26

27

## **JURY TRIAL DEMAND**

Plaintiff hereby demands a trial by jury on all issues so triable.

RESPECTFULLY SUBMITTED this 16<sup>th</sup> Day of March, 2022.

## BENDAU & BENDAU PLLC

By: /s/ Clifford P. Bendau, II  
Clifford P. Bendau, II  
Christopher J. Bendau  
*Attorneys for Plaintiff*

## **VERIFICATION**

1 Plaintiff, Linda Gonzalez, declares under penalty of perjury that she has read the  
2 foregoing Verified Complaint and is familiar with the contents thereof. The matters  
3 asserted therein are true and based on her personal knowledge, except as to those matters  
4 stated upon information and belief, and, as to those matters, she believes them to be true.  
5

Linda  
Linda Gonzalez (Mar 16, 2022 20:54 PDT)

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Phoenix, AZ 85060

# GONZALEZ; COMPLAINT DRAFT 1 (TO CLIENT); 3-16-22

Final Audit Report

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